CCA
CENTRAL CITY ASSOCIATION OF LOS ANGELES

March 4, 2019

Council President Herb Wesson
Los Angeles City Council
200 N. Spring Street
Los Angeles, CA 90012

Re: *March 6th City Council: Item 18-Mitchell v. City of Los Angeles*

Dear Council President Wesson,

Every year, the homeless count provides us with hard data to assess the region's performance at housing our most vulnerable population. No matter the results of this year's count, we can tell by the number of people living on the streets that the City of Los Angeles is still facing a humanitarian crisis. As Angelenos anxiously await the results of this year's homeless count, we want to highlight one of the most important issues related to homelessness that you and your colleagues on the City Council will be discussing: *Mitchell v. City of Los Angeles (Mitchell)*.

From September 2018 to February 2019, the City Council's Homelessness and Poverty Committee held three closed session discussions with representatives from City Attorney Mike Feuer's office regarding *Mitchell.*[i] At the public portion of these hearings, more than 100 speakers came to City Hall to let their representatives know how they feel about the case, demonstrating high public interest in this issue. Because the discussions were conducted in closed session and kept confidential, the public has not learned whether the City plans on settling the case – including possible settlement terms – or taking the case to trial. At the last committee meeting in February, the committee ultimately moved the matter to City Council without a recommendation.

As the legislative body for L.A., we are pleased that the full Council will soon be deliberating over this citywide policy issue. While there may be attempts to present *Mitchell* as a legal matter that will only impact Downtown L.A., we must recognize that as a false premise: it is a legal case that has far-reaching policy implications. The City is already involved in similar litigation in the Venice area, *Cooley v. City of L.A. (Cooley)*, and any action taken on *Mitchell* will impact *Cooley*, LAMC 56.11, "A Bridge Home" and certainly the entire city.

<u>LAMC 56.11 & *Mitchell*</u>
On March 14, 2016, *Mitchell* was filed by Legal Aid Foundation of Los Angeles (LAFLA) against the City alleging that LAPD had undertaken a mass policy of arresting homeless individuals in Downtown for quality of life offenses in order to confiscate and destroy their property.[ii] The case was filed at a time when the City had no regulations related to the use of the public right-of-way for maintaining personal property. This case is currently before U.S. District Judge S. James Otero with a pending court date of June 2019.

After years of policy work from the Council, on April 6, 2016, the City Council voted to approve a revision to LAMC 56.11 which placed a 60-gallon limit on personal goods in public areas, required 24-hour notice before any personal goods could be removed and mandated 90 days of storage of personal goods confiscated by the City.[iii] This revision of LAMC 56.11 created an approach that struck a balance between the twin goals of safeguarding individual property rights and providing accessible and safe sidewalks to the public. This was the City's first policy on how to manage personal property in the public right-of-way.

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On April 13, 2016, Judge Otero issued a temporary restraining order in the *Mitchell* case. The timing was unfortunate, because it prohibited implementation of the revisions to LAMC 56.11 that the Council had just approved a week earlier in the Downtown area specified in *Mitchell*. This effectively eliminated the 60-gallon limit on personal goods for a part of Downtown.

On May 11, 2016, the City Attorney filed a motion for clarification of the temporary restraining order.[iv] The clarification was sought for two items: scope of the community caretaking exception when a person is arrested and the treatment of bulky items. LAFLA objected to the request for clarification.

The Court declined to rule on the scope because it "goes beyond simplifying clarifying the Order and instead asks the Court to rule on a complex issue of constitutional law." The City also asked for clarification to determine if it is permitted to confiscate and destroy bulky items pursuant to the revised LAMC 56.11 which allows for the immediate removal and destruction of certain items that cannot fit within a 60-gallon container. Tents, operational bikes, wheelchairs, walker or crutches are excluded from this list. The Court declined to clarify and stated, "To the extent that the City seeks a decision regarding the constitutionality of LAMC 56.11, it must do so in a setting that squarely raises that issue."

We commend the City Attorney for seeking clarification and understand Judge Otero's decision to defer these items. *Mitchell* is clearly setting the stage for litigation on LAMC 56.11 and if we settle with terms that are inconsistent, it will help make the case that 56.11 is unconstitutional. We believe LAMC 56.11 demonstrates the City's commitment to protecting people's property as well as their constitutional rights. We all agree that the medicine and family photos of a person experiencing homelessness should be protected, and LAMC 56.11 and the associated guidelines for implementation make that clear.

<u>Concerns with *Mitchell*</u>

Since the *Mitchell* injunction was issued in 2016, we have seen the conditions in Downtown steadily worsen. Piles of belongings entangled with trash and debris, creating unhealthy conditions, are a common sight. Worse yet, we now are experiencing a typhus outbreak throughout Downtown. **We firmly believe that every individual – including the most vulnerable – is entitled to the full benefit of the U.S. Constitution's protections. We believe that the injunction has created serious public health implications and applying a reasonable limit on personal goods will help create healthier conditions while still providing individuals with the Constitution's protections.**

The injunction effectively eliminated any limit on personal goods just for an area of Downtown. **This creates different standards for one neighborhood of L.A., which we believe is unconstitutional and sets the City up for further lawsuits.**

Due to the concentration of homeless residents and services in Downtown, there is the greatest need for a reasonable limit on personal goods in public areas. **If *Mitchell* is settled with no limit on personal goods in the area with the most homeless services, it is unreasonable to believe that any other part of the city would be able to have more restrictive standards.** *Mitchell* will establish the baseline for the entire city and that is why we feel strongly that settling *Mitchell* with no limits on personal goods except for specific bulky items would be even worse for the City than losing at trial. If the City loses at trial, there is always the ability to appeal to a judge who can provide a clear road map for the City to follow. **If the City settles the case, the only way to change the settlement terms is to return to the plaintiffs and seek agreement.** This is important to consider when using taxpayer dollars to fund litigation.

We are concerned that settling *Mitchell* would threaten the "A Bridge Home" program. This program is a good first step towards providing housing as a fundamental right in L.A. After El Puente, the first site in the program, opened in Downtown in September 2018, LAFLA submitted a letter outlining their next lawsuit arguing that enforcing LAMC 56.11 in special enforcement zones is unconstitutional. We are glad the Council will also be discussing this at the same meeting as the Mitchell discussion.

Settlement Terms

We believe a draft settlement agreement has been discussed among the City Attorney and members of the City Council. We are deeply concerned that it is being presented favorably as maintaining the status quo. We believe that is not true. We cannot have a settlement agreement that essentially codifies the *Mitchell* injunction, even if there is an attempt to limit the time period of its application. We can all agree that the inhumane conditions that exist today cannot continue.

A time-limited settlement agreement will tie the City's hands and dilute both the implementation and effectiveness of the City's recent comprehensive homelessness policies such as "A Bridge Home." Additionally, a settlement made with plaintiffs does not give the City any flexibility. If circumstances change, the City would have to go back to the plaintiffs for new terms instead of being able to go directly to a judge.

Requests

We ask you to consider the following recommendations when deliberating the *Mitchell* case.

- Our coalition of social service providers and community leaders submitted a letter last September to the City Council asking to **reject a Downtown-specific settlement.** We ask that you not single out Downtown and consider the inequality of treating people in one neighborhood differently.

- CCA is greatly concerned that the public has not had the ability to learn about the potential citywide implications of a proposed settlement of the *Mitchell* case. To that point, **we ask the Council to consider releasing a draft of the settlement terms to allow the public to weigh in before taking official action.** We believe this will elevate the public discourse on this important citywide policy matter and provide transparency while increasing accountability.

- When discussing settlement terms, we ask you to consider the following:
    - **Geography** – We should presume any settlement terms for one area would become citywide. This occurred with *Lavan v. City of L.A*. We need a solution that works for the entire city.
    - **Time** – Any time limits in a settlement will not work. It will be impossible to shift back once a standard has been set as evidenced by *Jones v. City of L.A*.
    - Any settlement terms need to be **consistent with city policies already in place**.

- **We ask that you consider *Mitchell* comprehensively and assess the impacts a settlement would have on not only Downtown, but the entire city.** L.A. has been mired in a cycle of lawsuits that has dictated the City's policy on homelessness. We support ending that cycle and enabling a more proactive, productive approach to homelessness. These lawsuits tie the City's hands in making policy and undermine the work that the Council has done to address homelessness. You've done significant work on Proposition HHH, Measure H, "A Bridge Home" and the revision of LAMC 56.11.

- The City Council and the City Attorney have the ability to **hire outside counsel to assist with *Mitchell* and related litigation including LAMC 56.11, "A Bridge Home", *Cooley*, and revision of LAMC 41.18 and we recommend that they do so**. These are very complex matters that require a tremendous amount of time from City staff. We believe having additional resources will be beneficial to the City to develop a comprehensive strategy and provide a more complete picture of how these items relate to one another.

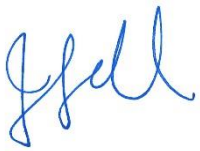
- **The City has the ability to present LAMC 56.11 to a court and ask for a constitutional review.** The City Council may consider asking the City Attorney to do this in order to prepare for challenges related to "A Bridge Home."

- Due to *Martin v. City of Boise* the City has restricted enforcement of LAMC 41.18 (a) and (d) and suspended enforcement of LAMC 41.18 (b) and (c). **The City needs to make LAMC 41.18 consistent with LAMC 56.11 by allowing sleeping in tents from 9 p.m. to 6 a.m. and other amendments.**

Conclusion

CCA is committed to working collaboratively to end homelessness and fully supports constitutional protections for all people. Downtown is home to the most supportive services, housing, and shelter options for people experiencing homelessness, but we can and should do more. The Refresh Spot, El Puente and The Bin are all examples of good work that we support. We stand ready to work to end this humanitarian crisis. Thank you for your consideration.

Sincerely,



Jessica Lall
President & CEO
Central City Association

Cc: The Los Angeles City Council
Mayor Eric Garcetti
City Attorney Mike Feuer
Chief Michel Moore, LAPD
The Honorable S. James Otero

[i] https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=18-0751
[ii] https://www.clearinghouse.net/detail.php?id=15286
[iii] http://clkrep.lacity.org/onlinedocs/2014/14-1656-s1_ORD_184182_4-11-16.pdf
[iv] https://www.clearinghouse.net/detail.php?id=15286